Devadass a/l Raju v Tham Soon Kum & Ors

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO 12B-1044 OF 2010
SURAYA OTHMAN J
15 OCTOBER 2012

Damages — Road accident — Appeal against award — Housekeeping services award — whether helper or maid for housekeeping services necessary — Whether court could award if housekeeping services were provided by family members — Whether amount of RM800 awarded justified

A road accident occurred between the plaintiffs and the defendant's motorcars and as a result, the plaintiffs suffered injuries. In the sessions' court, it was found that the defendant was 100% liable for the accident. RM153,600 was awarded to the second plaintiff and also cost for hiring a helper or a maid to assist in household chores. Dissatisfied with the award, the defendant appealed. The defendant's appeal was allowed and the award was reduced to RM96,000. The second plaintiff was unhappy and appealed against the decision for reducing the award. The issues that arose for the court's determination were whether the second plaintiff required a helper or a maid for housekeeping services; whether the court could award if the housekeeping services were provided by family members; and whether the amount of RM800 awarded was justified in the circumstances of the case.

Held, allowing the appeal in part with no order as to costs:

(1) The plaintiff had, through medical evidence, and through her own evidence satisfied the court that she required housekeeping services. In fact she had elicited the help of family members to do the household chores for her and this evidence was never challenged by the defence which result in her evidence being accepted by the defence and the court. The court can award the cost for housekeeping services if it was provided or rendered by parents, a wife (spouse) and by extension relatives or family members (see paras 19 & 23).

(2) Since she was not fully incapacitated and was able to find another job six months after the accident, the housekeeping services required by her need not be a full time, stay-in helper or maid. As such, the award by SJ on housekeeping services was maintained but the amount at RM800 per month, was found to be excessive, and reduced to RM500 per month which was a realistic and reasonable amount, after taking into account the circumstances of the case (see para 29).

[Bahasa Malaysia summary

Kemalangan jalan raya berlaku di antara plaintif-plaintif dan motokar defendan dan akibatnya plaintif-plaintif mengalami kecederaan. Di mahkamah sesyen, ia didapati bahawa defendan bertanggungjawab 100% untuk kemalangan tersebut. Sebanyak RM153,600 diawardkan kepada plaintif kedua dan juga kos untuk mengupah pembantu atau pembantu rumah untuk membantu kerja-kerja rumah. Tidak puas hati dengan award tersebut, defendan merayu. Rayuan defendan dibenarkan dan award dikurangkan kepada RM96,000. Plaintif kedua tidak berpuas hati dan merayu terhadap keputusan untuk mengurang jumlah award tersebut. Isu-isu yang berbangkit untuk penentuan mahkamah adalah sama ada plaintif kedua memerlukan pembantu atau pembantu rumah untuk perkhidmatan pengurusan rumah; sama ada mahkamah boleh mengawardkan jika perkhidmatan pengurusan rumah diberikan oleh ahli keluarga; dan sama ada jumlah sebanyak RM800 yang diawardkan adalah berjustifikasi dalam keadaan kes ini.

Diputuskan, membenarkan sebahagian rayuan tanpa perintah kepada kos:

(1) Plaintif telah melalui keterangan perubatan dan melalui keterangannya sendiri telah membuktikan kepada mahkamah yang dia memerlukan perkhidmatan pengurusan rumah. Hakikatnya dia telah mendapatkan bantuan ahli-ahli keluarga untuk menguruskan kerja-kerja rumah untuknya dan keterangan ini tidak dicabar oleh pembelaan yang mengakibatkan keterangannya diterima oleh pembelaan dan mahkamah. Mahkamah boleh mengawardkan kos untuk perkhidmatan pengurusan rumah jika ianya diberikan atau dilakukan oleh ibu bapa, isteri dan oleh saudara mara atau ahli keluarga (lihat perenggan 19 & 23).

(2) Memandangkan plaintif kedua bukan tidak berupaya sepenuhnya dan dapat mencari pekerjaan lain enam bulan selepas kemalangan, perkhidmatan pengurusan rumah yang diperlukan olehnya tidak perlu kerja sepenuh masa, pembantu atau pembantu rumah yang tinggal dirumah. Oleh itu award oleh hakim sesyen atas perkhidmatan pengurusan rumah dikekalkan tetapi jumlah RM800 sebulan, didapati adalah berlebihan, dan dikurangkan kepada RM500 sebulan yang mana adalah lebih realistik dan jumlah yang munasabah, selepas mengambil kira keadaan kes (lihat perenggan 29).]

Cases referred to

Aik Ming (M) Sdn Bhd v Chang Ching Chuen & Ors [1995] 2 MLJ 770, CA (refd)

Browne v Dunn (1893) 6 R 67, HL (refd)

Carapiet v Derderian AIR [1961] Cal 359, HC (refd)

Cunningham v Harrison [1973] QB 942 (refd)

Davis v Powell Duffryn Associated Ltd [1942] AC 601, HL (refd)

Flint v Lovell [1935] 1 KB 354, CA (refd)
George v Pinnock [1973] 1 WLR 118, CA (refd)
Manogharan Veeramuthu & Anor v Fauziah Md Isa [2005] 5 MLJ 34; [2005] 3 CLJ 217, HC (folld)
Marappan & Anor v Siti Rahmah bt Ibrahim [1990] 1 MLJ 99, SC (refd)
Ong Ah Long v Dr S Underwood [1983] 2 MLJ 324, FC (refd)
Thrimalai & Anor v Mohamed Masry bin Tukimin [1987] 1 MLJ 153 (refd)
Tun Kuan Yau v Suhindrimani [1985] 2 MLJ 22 (refd)
Wong Swee Chin v PP [1981] 1 MLJ 212, FC (refd)

Legislation referred to
Evidence Act 1950
Indian Evidence Act 1872 [IND]

Brijnandan Singh Bhar (Brijnandan Singh Bhar & Co) for the plaintiff.
M Ravi (Omar Bakhi Ahmad) for the defendant.

Suraya Othman J:

INTRODUCTION

[1] A road accident occurred between the plaintiffs and the defendant's motorcars on 30 November 2008 and as a result, all the three plaintiffs suffered injuries. The plaintiffs filed a suit in the sessions court and the sessions judge ('SJ') found the defendant to be 100% liable for the accident. The SJ awarded RM153,600 to the second plaintiff, Madame Lew Chia Pei as cost for hiring a helper or a maid to assist her in her household chores. The defendant, dissatisfied with this award, appealed to me. I partly allowed the defendant's appeal and reduced the award to RM96,000. Now, the second plaintiff is unhappy and appealed against my decision for reducing the award. As such the issue before me is whether the SJ's award for cost of hiring a helper or a maid for housekeeping services is justifiable.

DECISION OF SJ

[2] The grounds for the SJ's decision in allowing cost for hiring a helper or a maid is found at p 27 of the record of appeal ('ROA') and for ease of reference it is set out below.

> Kos mengupah orang gaji sebanyak RM153,600.00
>
> Peguam Defendan tidak menghujahkan langsung berkenaan isu ini di dalam penghujahannya manakala peguam plaintif telah menghujahkan bahawa menurut doktor pakar otopedik plaintif, plaintif kedua mengalami antaranya stiffness of both

knees, stiffness of the right toes, inability to squat, difficulty to climb stairs dan inability to lift heavy weight. Di mukasurat 8 di perenggan 12 laporan tersebut doktor pakar juga ada menyatakan 'Ms Lew Chia Pei has permanent disabilities of both the thighs, knees and the right foot. She will have great difficulties in undertaking jobs and activities those require a lot of walking, running, jumping, climbing, squatting and carrying of weights'. Di dalam keterangan plaintif kedua, telah dinyatakan di mukasurat 6 nota keterangan:

PP: Selain kerja di YST sebelum accident ada buat kerja rumah dan jaga anak?

SP2: Ya.

PP: Akibat accident masih berupaya buat kerja-kerja rumah?

SP2: Tidak boleh buat kerja rumah kerana kedua-dua kaki tidak boleh bengkok dan minta tolong ahli keluarga untuk buat kerja-kerja itu.

PP: Tidak upah orang gaji?

SP2: Tidak mampu.

Keterangan lisan plaintif kedua ini langsung tidak dicabar oleh peguam defendan.

Daripada laporan pakar plaintif kedua serta keterangan plaintif di atas, mahkamah merasakan ianya adalah wajar bagi plaintif untuk mendapatkan bantuan disebabkan kecederaan yang dialaminya akibat daripada kemalangan tersebut yang telah menyebabkan mempunyai kesukaran untuk membuat kerja-kerja rumah termasuk menjaga anaknya yang masih kecil.

Bagi jumlah kos mengupah orang gaji tersebut, peguam plaintif telah menghujahkan sebanyak RM800.00 sebulan bagi 16 tahun. Mahkamah bersetuju dengan jumlah 16 tahun years of purchase disebabakan ketika kemalangan SP2 berumur di bawah 35 tahun dan mahkamah juga bersetuju dengan amaun RM800.00 sebulan berdasarkan kes *Manogharan Veeramuthu & Anor v Fauziah Md Isa* [2005] 3 CLJ 217 di mana di muka surat 227 telah diputuskan bahawa 'I am of the view that this award has to be in keeping with the current costs in obtaining housekeeping services. While the normal cost of obtaining a foreign maid may be about RM800.00 per month, there are other expenses to be incurred e.g. the fees to the employment agency, incidental expenses such as food and accommodation for a stay-in maid. Our courts have consistently recognized the considerations of inflation and enhanced cost of living: see Raji Transport, supra, and the cases cited therein. The award of RM400.00 by the court below appears not to be commensurate with current costs. In the circumstances, I am of the view that the measure of damages for loss of housekeeping services should be treviewed and enhanced to a more realistic and reasonable figure of RM800.00 per month.' Oleh itu mahkamah membenarkan kos mengupah orang gaji bagi plaintif kedua sebanyak RM800.00 x 16 x 12 = RM153,600.00.

SUBMISSION OF DEFENDANT'S COUNSEL

[3] Mr M Ravi, counsel for the defendant submitted that the SJ has erred in law and in fact when she allowed the second's plaintiff's claim for cost of hiring a helper or a maid when there was no evidence brought before the court that she

had employed one; whether through her testimony or others or through any supporting documents tendered in court. He argued that the award of RM800 a month for 16 years which total to RM 153,600 is categorised as a special damage award and as such the plaintiff has to strictly prove this amount under the law. He further argued that the second plaintiff went back to work six months after the accident and since she can work, she should also be able to do the household chores.

SUBMISSION OF THE PLAINTIFF'S COUNSEL

[4] Mr Brijnandan Singh Bhar, counsel for the plaintiff submitted the SJ's decision to award the second plaintiff the cost for housekeeping services should not be disturbed as there was sufficient evidence from the medical report and from her evidence in court that she needed such services due to the injuries she sustained due to the road accident. He argued that there was no cross-examination of the second plaintiff by the defence counsel on this issue and since no challenge was made by the defence counsel, the second plaintiff's evidence that she requires housekeeping services was thus accepted by them. He further contended that the SJ has not erred in law and in fact and as such this court should not disturb or interfere in her decision to award for housekeeping services.

ISSUES TO BE TRIED

[5] Whether the court can award for housekeeping services.

(a) whether the second plaintiff requires a helper or a maid for housekeeping services; and

(b) whether the court can award if the housekeeping services are provided by family members.

[6] Whether the amount awarded is justified in the circumstances of the case, ie whether RM800 a month is a realistic and reasonable figure for hiring a helper or a maid for housekeeping services.

DECISION OF THE COURT

Whether the court can award for housekeeping services

(a) *whether the second plaintiff requires a helper or a maid for housekeeping services;*

(b) *whether the court can award if the housekeeping services are provided by family members.*

[7] The claim for housekeeping services comes under the head of special damages and it is a well established principle that special damages in contrast to general damages, have to be specifically pleaded and strictly proved.

[8] In the case of *Ong Ah Long v Dr S Underwood* [1983] 2 MLJ 324, Syed Agil Barakbah FJ held:

> It is well-established principal that special damages in contrast to general damages, have to be specifically pleaded and strictly proved. … The reason that special damages have to be specifically pleaded is to comply with its object which is to crystallised the issue and to enable both parties to prepare for trial. … In special damages claims the exact loss must be pleaded where the precise amount of item of damages has become clear before the trial either because it has already occurred and so become crystallised or because it can be measured with complete accuracy.

[9] In the case of *Thrimalai & Anor v Mohamed Masry bin Tukimin* [1987] 1 MLJ 153 Shankar J, opined that:

> Special damages must be strictly proved. To my mind the evidentiality burden here goes beyond establishing the claim on a balance of probabilities. The figures put forward for special damages must come as close to mathematical certainty as the circumstances of the case would allow.

Thus from the cases above, the court can award housekeeping services but the second plaintiff has to strictly prove it. The question here is whether the second plaintiff has proved this claim. To answer that, the issue as to whether the second plaintiff requires housekeeping services and whether housekeeping services can be provided by family members has to be determined first.

[10] Mr M Ravi contended that there was no evidence brought before the court that the second plaintiff did employ a helper or a maid to assist her after the accident. This is so because she cannot afford to employ one and she had her family members to help her with the household chores. As housekeeping services comes under special damages which has to be specifically proved, the second plaintiff had failed to do so and thus the defendant's appeal on this score should be allowed.

[11] Mr Brijnandan Singh Bhar on the other hand submitted that the second plaintiff was incapacitated due to her injuries as a consequence of the accident. He argued that the SJ has held that there was sufficient medical evidence that such help was required due to the injuries suffered. Further, the defendant did not cross-examine the second plaintiff on this issue and as such was deemed to have accepted her evidence.

[12] On perusal of the SJ's judgment, it is clear to me that she has awarded

cost of hiring a helper or a maid for housekeeping services after considering both the medical report by the orthopaedic consultant and the second plaintiff's evidence. In her own words, she stated that she felt that it is appropriate 'wajar' for the second plaintiff to get help since the disabilities she suffered as a consequence of the accident has made it difficult for her to do household chores and to take care of her children who are still very young in age. She further stated that the evidence of the second plaintiff was not in the least challenged by the defendant's counsel. The excerpt of her judgment at pp 27–28 of the ROA is reproduced below:

> Plaintiff kedua mengalami antaranya stiffness of both knees, stiffness of the right toes, inability to squat, difficulty to climb stairs and inability to lift heavy weight. Di mukasurat 8 di perenggan 12 laporan tersebut doctor pakar juga ada menyatakan 'Ms. Liew Chia Pei has permanent disabilities of both the thighs, knees and the right foot. She will have great difficulties in undertaking jobs and activities those require a lot of walking, running, jumping, climbing, squatting and carrying of weights'.
>
> Keterangan lisan plaintif kedua ini langsung tidak dicabar oleh peguam defendan.
>
> Daripada laporan pakar plaintif kedua serta keterangan plaintif di atas, mahkamah merasakan ianya adalah wajar bagi plaintif untuk mendapatkan bantuan disebabkan kecederaan yang dialaminya akibat daripada kemalangan tersebut yang telah menyebabkannya mempunyai kesukaran untuk membuat kerja-kerja rumah termasuk menjaga anaknya yang masih kecil.

[13] I agree with the SJ's assessment that the second plaintiff needed help or assistance with her household chores and taking care of her young children since the orthopaedic consultant has stated so in no uncertain terms in his report that 'Ms Lew Chia Pei has permanent disabilities of both the thighs, knees and the right foot' and 'she will have great difficulties in undertaking jobs and activities that require a lot of walking, running, jumping, squatting and of weights'. Further, the second plaintiff admitted in evidence that after the accident she was not able to do household chores since she cannot bend both her legs and had elicited the help of family members to assist her. She also stated that she cannot afford to employ a helper or a maid.

> PP: Selain kerja di YST sebelum accident ada buat kerja rumah dan jaga anak?
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> SP2: Ya.
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> PP: Akibat accident masih berupaya buat kerja-kerja rumah?
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> SP2: Tidak boleh buat kerja rumah kerana kedua-dua kaki tidak boleh bengkok dan minta tolong ahli keluarga untuk buat kerja-kerja itu.
>
> PP: Tidak upah orang gaji?
>
> SP2: Tidak mampu.

[14] On perusal of the notes of evidence ('NOE'), I found that the

defendant's counsel had failed to cross-examine the second plaintiff on this issue and as such her evidence that she requires household services and that those services were provided by her family members must be deemed to be accepted by the defence since it was never challenged. The effect of failure to cross-examine or non-challenging a witness's testimony has been decided by a number of cases.

[15] In the case of *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212, the Federal Court said as follows:

> Mr Jagjit Singh also raised as one of main grounds of appeal that the trial judge erred in law when he held that the failure of the defence to cross-examine the two prosecution witnesses on the ammunition actually found in the trouser pockets of the appellant at the time of his arrest (the sub-matter of the third charge) constituted a clear admission of the charge of possession by the appellant. We consider that statement of the law as a misdirection. A correct statement of the law is that failure of the defence to cross-examine the prosecution witnesses on the matter merely goes to the credibility of their testimony, to wit, the fact that they found the ammunition in the appellant's trouser pockets remains unshaken. On this point we need only say there is a general rule that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony.

[16] The Court of Appeal in the case of *Aik Ming (M) Sdn Bhd v Chang Ching Chuen & Ors* [1995] 2 MLJ 770, with regard to failure to avail oneself of the opportunity to put one's case to the opponent in cross-examination had this to say:

> It is essential that a party's cause be expressly put to his opponent's material witness when they are under cross-examination. A failure in this respect may be treated as abandonment of the pleaded case and if a party in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument. It is quite wrong to think that this rule is confined to the trial of criminal cases. It applies with equals force in the trial of civil cases as well.

[17] The rule in *Browne v Dunn* (1893) 6 R 67 has been applied by Indian Courts in the context of the Indian Evidence Act 1872, on which our Evidence Act 1950 is based. I need only refer to the decision in *Carapiet v Derderian* AIR 1961 Cal 359, where Mukharji J, p 362 of the report expressed the principle in the following words:

> The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material cases in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made

when the turns of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so, much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety.

Such failure leads on miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.

[18] Thus it is incumbent upon the learned defence counsel to challenge and to put his client's case to the second plaintiff that such help is not required. This, the defendant failed to do. Even in submission to the SJ, the defence counsel has failed to address this issue as stated by the SJ in her judgment at p 27:

Peguam defendan tidak menghujah langsung berkenaan isu ini di dalam penghujahannya

[19] Therefore, I find that the plaintiff has, through medical evidence, and through her own evidence satisfied this court that she requires housekeeping services. In fact she has elicited the help of family members to do the household chores for her and this evidence was never challenged by the defence which result in her evidence being accepted by the defence and the court.

The next question is whether the court can award her cost of housekeeping services if it was provided by family members

[20] There are cases which held that this award can be given by the courts in cases where no help was employed to assist or look after the plaintiff, if it can be shown that the plaintiff was looked after or taken care of by parents.

[21] In the case of *Marappan & Anor v Siti Rahmah bt Ibrahim* [1990] 1 MLJ 99, the Supreme Court had this to say with regards to an award provided by family members who are not paid. At held 1:

(1)The learned judge was correct in holding that the item for care and nursing was justifiable and should not be any the less if the person concerned was looked after at home instead of in an institution as it is now settled that compensation can be given in money for services rendered by parents. The learned judge was justified in making the award of $350 pm for this item as the respondent was paralysed and needed care and nursing all the time.

At p 100 para D, Gunn Chit Tuan SCJ said this:

> As for the cost of care, the learned judge found that as PW3 did not actually engage anyone to look after the plaintiff, her estimate of the case of caring at $800 pm was most speculative. He also considered that there was no necessity to consider the cost of sending the plaintiff to a nursing home as all along she had been looked after by PW3. The learned judge, however, referred to *Taylor v Bristol Omnbibus Co* in which the English Court of Appeal has held that the item for care and nursing was justifiable and should not be any less if the plaintiff was looked after at home instead of an institution, as it is now settled that compensation can be given in money for services rendered by parents. As the local cases cited to him had given awards ranging from $150 to $350 pm to this item and in the light of inflation the learned judge considered that an award of $350 pm to be fair and adequate for the cost of caring for the plaintiff at home. Before us, counsel submitted that $250 should be sufficient but we agreed with the learned judged that in the circumstances of this case the award for this item should be $350 pm as the plaintiff was paralysed and needed care and nursing all the time.

[22] In *Cunningham v Harrison* [1973] QB 942 it was also held that the plaintiff was entitled to compensation for nursing care and attendance given by the wife. In this case the plaintiff's husband was permanently paralysed in his body and all four limbs and had to spend the rest of his life in bed or in a wheelchair. This case refers to the case of *George v Pinnock* [1973] 1 WLR 118 where the CA, per curiam had this to say:

> When a gravely injured husband is entitled to damages and his wife renders services to him instead of a nurse he is entitled to recover compensation, which he should hold on trust for the wife, for the value of services without the need for a legal agreement; and even though the wife may only be doing domestic duties in the house, all extra attendance on the husband calls for compensation.

[23] As can be seen, the cases above pertain to the issue of cost of care and nursing but I feel by extension, it can also cover for cost of housekeeping services. Thus from the cases, it is clear that the court can award the cost for housekeeping services if it was provided or rendered by parents, a wife (spouse) and by extension relatives or family members.

Whether the amount awarded is justified in the circumstances of the case that is whether RM800 a month is a realistic and reasonable figure for hiring a helper or a maid for housekeeping services

[24] The SJ adopted or applied the quantum awarded in the case of *Manogharan Veeramuthu & Anor v Fauziah Md Isa* [2005] 5 MLJ 34; [2005] 3 CLJ 217 where it was held that RM800 is a realistic and reasonable figure for hiring a stay-in maid.

[25] The question here then is whether RM800 per month in our instant case is a realistic or reasonable figure taking into consideration the circumstances of the case.

[26] The learned plaintiff's counsel referred to *Davis v Powell Duffryn Associated Ltd* [1942] AC 601; *Flint v Lovell* (1935) 1 KB 354 and *Tun Kuan Yau v Suhindrimani* [1985] 2 MLJ 22 to argue that I should be slow to interfere in the amount of award given by the SJ and that I should only interfere if the amount awarded is too excessive. Thus is RM800 too excessive?

[27] In *Marappan & Anor v Siti Rahmah bt Ibrahim*, a case submitted by Mr Brijnandan Singh Bhar, the court opined that since PW3 did not engage anyone to look after the plaintiff, the plaintiff's estimate of RM800 per month was most speculative and awarded RM350 instead, after taking into account inflation, as a fair and adequate figure for the cost of care and nursing of the plaintiff at home.

[28] In our instant case, it must be noted that the second plaintiff was working as an accounts clerk in YST & Sons before the accident. After the accident she was hospitalised and given two months medical leave by the hospital. She made a complaint to the labour office due to her employer's failure to pay the two months pay while she was on medical leave and a notice was issued by the labour office to YST & Sons. The employer then paid the two months (medical leave) pay but refused to take her back to work for them. In her evidence she testified that she was without a job for six months after the accident after which she found another job. At p 35 of the ROA, in examination-in-chief, she said this:

> PP: Berapa lama tidak dapat kerja selepas accident.
>
> SP2: 6 bulan lepas itu ada cari kerja lain.

[29] Thus, the second plaintiff did manage to find another job six months after the accident. This shows that she is not fully incapacitated and she can still do some household chores though with great difficulty and thus need a helper or a maid to assist her. It must be noted that the two cases, *Marappan & Anor and Cunningham v Harrison* pertain to cost of care and nursing of plaintiffs who are paralysed and needed care and nursing all the time which in our case the second plaintiff is not. As stated earlier, in *Marappan*'s case, the court felt that RM800 per month as cost of care and nursing at home was speculative and reduced it to RM350. In our instant case, the second plaintiff, though having 'permanent disabilities of both the thighs, knees and the right foot was able to find a job six months after the accident. Thus these two factors; that the second plaintiff is not fully incapacitated (paralysed and needed care and nursing all the time or a full time stay-in helper or maid) and that she was able to find

another job six months after the accident, should be factors to be taken into consideration by the SJ when determining or arriving at 'a realistic and reasonable figure', that is the appropriate amount to be awarded as the cost of hiring a helper or a maid for housekeeping services. In her case the helper or maid need not be a full time, stay-in helper or maid since she does not need to be 'cared and nursed' full time. Thus, since the SJ has not taken these two factors into account, the award of RM800 per month is, in the circumstances of this case, excessive and should be reduced to RM500 per month to reflect a more realistic and reasonable figure.

CONCLUSION

[30] In summary, I find that the second plaintiff requires a helper or a maid for housekeeping services due to the injuries she suffered as a consequence of the accident. I also find that the second plaintiff need not hire a helper or a maid for her to succeed in her claim for housekeeping services and that she can be compensated in money for housekeeping services provided or rendered by her relatives or family members. I also find that since she is not fully incapacitated and was able to find another job six months after the accident, the housekeeping services required by her need not be a full time, stay-in helper or maid. As such the award by SJ on housekeeping services is maintained but the amount at RM800 per month, I find to be excessive, and I thus reduced it to RM500 per month which amount I feel, is a realistic and reasonable amount, after taking into account the circumstances of the case. Thus the defendant's appeal is partly allowed with no order as to costs.

[31] Appeal by the defendant is partly allowed with no order as to costs.

Appeal allowed in part with no order as to costs.

Reported by Ibnu Aswan